

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LAURA LYNCH,)	
Charging Party,)	
)	CASE NO. 9801008459
v.)	
)	ORDER SUSTAINING
)	RESPONDENT'S APPEAL
EUGENE HUGHES,)	AND REVERSING IN PART
Respondent.)	FINAL AGENCY DECISION

The above-captioned matter came before the Montana Human Rights Commission (Commission) on May 21, 2001, for consideration of the Final Agency Decision dated January 22, 2001. Appearing before the Commission was Bill Hanson, attorney for the Respondent. Charging Party did not appear, having elected not to pursue an appeal in this matter.

A contested case hearing in this matter took place on May 2-5, 15-16 and 24, 2000, in Butte and Helena, Montana. The Hearing Examiner issued the Department's final decision on January 22, 2001, finding that Charging Party (1) was not discriminated against by Respondent on account of her sex because Respondent was not acting as her employer or an agent of her employer when he allegedly subjected her to a sexually offensive and hostile work environment; (2) was not retaliated against by Respondent for opposing illegal discrimination; (3) did not suffer harm because of Respondent's acts; and (4) was retaliated against by Respondent for filing a Human Rights complaint during her employment. Affirmative relief was ordered.

After consideration of the record and the argument of Respondent's attorney, the Commission concludes that the Hearing Examiner erred in concluding that Charging Party was retaliated against by Respondent for filing a Human Rights complaint. In her original complaint filed on February 4, 1998, Charging Party alleged that she was fearful of retaliation, but she did not complain of having been retaliated against by Respondent. On August 4, 1998, Charging Party filed an "Addendum to Complaint" in which she alleged that she was unable to continue working in the hostile workplace environment that Respondent created. Her "Addendum" did not specifically allege that she was retaliated against. The Hearing Examiner found that in order to prevail in her claim of retaliation, 24.9.603 ARM required Charging Party "to prove (1) that she aided or encouraged others to exercise rights under the Act or participated in a proceeding under the Act; (2) that Hughes subjected her to significant adverse acts, such as violence or threats of violence, coercion, intimidation or other interference with her person or property; and (3) that Hughes took adverse acts because of her protected activities." *FAD at 23*. The Hearing Examiner concluded that Charging Party proved all three elements of her retaliation claim. The Commission disagrees: Charging Party never alleged that she was retaliated against, or offered any evidence of retaliation. The Hearing Examiner erred as a matter of law in considering a claim of retaliation that was not before him. Accordingly, the Commission believes that the Hearing Examiner's Conclusions of Law No. 4 and No. 6, and Orders No. 2 and No. 3 of the Final Agency Decision must be reversed.

IT IS HEREBY ORDERED, that the Respondent's appeal is sustained and Conclusions of Law No. 4 and 6, and Orders No. 2 and 3 of the Final Agency Decision are reversed.

Dated this __ day of _____, 2001.

Gary Hindoien, Chair
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **ORDER SUSTAINING RESPONDENT'S APPEAL AND REVERSING IN PART FINAL AGENCY DECISION** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of _____, 2001.

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